

early period of the year, when they might be more advantageously dealt with than towards its close, when the House was made up chiefly of supporters of the Government.

MR. CONINGHAM observed there was very little result from their criticising the Estimates. Indeed, the unfortunate German traveller for the National Gallery was almost the only instance of success in so doing. Let hon. Gentlemen opposite unite with those on his side of the House to reduce the income tax to its normal condition. Then they might call themselves financial reformers.

MR. PEEL said, the amount of the Estimates asked for on account was only £500,000, and that, so far as he could calculate, the sum provided by the House would be sufficient to carry on the public service until the end of next month. He could not state when the Miscellaneous Estimates would be brought forward, that being a matter over which he had no control.

Amendment, by leave, *withdrawn*.

Original Question put, and *agreed to*.

Resolution read 2^o and *agreed to*.

COPYRIGHT (WORKS OF ART) BILL.

SECOND READING.

Order for Second Reading read.

THE ATTORNEY GENERAL moved the second reading of the Bill.

MR. WALTER said, that before the Bill was read a second time he wished to make a few observations on one important feature of it which appeared to him to be open to objection, and which he thought deserved the attention of the House. He apprehended that few hon. Members had read the various clauses of the Bill, and yet the measure was one which, if passed in its present shape, would seriously effect all persons throughout the country who might at any time become purchasers of modern pictures. It would be presumptuous on his part to criticise the construction of a Bill endorsed with such weighty and influential names as those which appeared on the back of the present measure; but, at the same time, he thought he was not incorrect in stating that the provisions of the Bill were not altogether consistent with its title. The Lord Chancellor recently stated that the object of the Bill was to protect artists against pirates and impostors. If that were all which the Bill proposed to effect he should be the

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last man to offer any objection to it; but if hon. Members would look at the 3rd Clause they would see that the protection which the Bill proposed to afford to artists was not against pirates and impostors only, but also against every person who happened to be a purchaser of pictures. The 3rd Clause provided that

“The author of every picture, work of sculpture, and engraving, which shall be made, or for the first time disposed of, after the commencement of this Act, and his assigns, shall have the sole and exclusive right of copying, reproducing, and multiplying such work, and the design thereof, by any means, of any size, and for any purpose, for the term of the natural life of such author, and thirty years after his death.”

Unless he read that clause incorrectly the effect of it would be that any person who purchased a picture after the passing of the Act, or, as the 6th Clause stated, who might have purchased a picture ten years before the passing of the Act, would be deprived of the power of permitting any friend to copy it, or of having it engraved himself. He was persuaded that very few persons would like to purchase works of art with any such conditions attached to them. The House had seen many a curious tenant-right Bill, but it appeared to him that to allow an artist, after he had sold a picture, to retain a copyright in it, and thereby to deprive the real owner of those rights which the artist originally enjoyed, was about as unreasonable a proposition as had ever been submitted to Parliament. Though a great lover of the fine arts, his taste lay in the direction of ancient pictures rather than in that of modern pictures, and, therefore, he had no personal objection to the Bill; but if he were a purchaser of modern pictures nothing could induce him to buy one with such conditions attached to it. He regarded the 3rd Clause as a great infringement upon the liberty of the subject, and if he wanted to have a picture copied he should consider such an enactment as an unwarrantable interference with his right of property. Let him put a strong case. Suppose a person wished to have a portrait of himself painted. One would naturally suppose that the owner of such a picture—the person who had commissioned and paid the artist should have the copyright in it; but, according to the present Bill, it was the artist who was to have the copyright, and the effect would be that any gentleman who might have his portrait painted and exhibited in the National Gallery would be prevented from having a photo-

graph made of it, or from having it copied or engraved for any purpose. He viewed the 3rd Clause with jealousy and dislike, and he should be glad to hear that it was not the intention of the Government to proceed with it. So far as it protected artists against pirates and impostors the Bill would have his cordial support. Every artist was entitled to protection in the enjoyment of any copyright of which he might be the real owner, but he contended that neither artists nor engravers should be allowed to retain a right in any work of art which they had parted with for a pecuniary consideration. If the 3rd Clause were not altered in Committee by the promoters of the Bill he should take the liberty of proposing some Amendments.

MR. CONINGHAM said, that many objections might be stated to the Bill, but perhaps they could be more fairly discussed in Committee than on the Motion for the Second Reading. The 5th Clause, however, was rather remarkable. It provided that

"No copyright shall be acquired in any work of fine art, or in the design thereof, until the name or monogram of the author or maker thereof shall have been legibly signed, painted, engraved, printed, stamped, or otherwise marked upon the face or some other conspicuous part of such work."

Now, a monogram might easily be imitated, and was, in reality, no security at all. An artist from some chance or other might neglect to put his name or monogram on a picture, and in that case the 5th Clause would deprive him of a copyright in his work. It was not by a monogram that the hand of an artist was to be recognized, but by that skill which could never be imitated.

LORD FERMOY said, he also objected to portions of the Bill. The hon. and learned Attorney General had prepared the Bill, no doubt, in the interests of artists, but he had overdone it. It was a sound principle that if an artist parted with a picture or an engraver with a plate the copyright should go with it. To legislate upon a different principle would be really doing injustice to artists themselves. Artists, like other men, must bring their works into the market, and depend upon the competition of buyers. If the law did not give to purchasers everything they thought they ought to have there would be fewer of them, and, consequently, lower prices would be paid for works of art. The

Bill, as it stood, would create an injurious monopoly, and it would also have the effect of preventing prints of some of our finest pictures from being circulated among the middle classes.

MR. LAYARD said, he did not wish to oppose the Bill, as he had a great respect for the eminent artists at whose suggestion it had been brought forward, but he hoped the hon. and learned Attorney General would consider well before he asked the House to give it a second reading. Indeed, he considered the Bill would rather prejudice than benefit both art and artists. The metaphysical definitions at the commencement of the Act were, in his opinion, too vague and too indefinitely expressed. For instance, it provided that "a design should mean a conception, an idea, or a composition embodied in any work of fine art." Now, to define what was a conception or idea would, he believed, defy even the logic of the Attorney General. Then again, "originality" was provided for as an essential element of a production to be protected by the Bill. Who could draw the line between that which was and that which was not original? Art was too progressive in its character to enable any one to do that. Under such a Bill the greatest masters of antiquity would have been exposed to fine and imprisonment. Some of the finest figures in Raphael's and Michael Angelo's compositions were taken or copied, with some little variation, from artists who lived before them; and in the highest period of art, in the 15th century, there were constant repetitions of the compositions of the masters of the 14th century. Then "the idea or any part of an idea" was made the exclusive property of the artist. Now, who could determine what was a "part of an idea?" If a sculpture represented a man with a cloak on his right or his left shoulder, as in the two statues recently erected at Charing Cross, was that to be considered "an idea" or a "part of an idea?" The effect of these excessive precautions would be to prevent any gentleman purchasing a work of art. The greatest artists of antiquity, as likewise such artists as Reynolds and Turner, required no Bill, for their genius protected them. It was said that artists had a property in their pictures, but that was not strictly the case; for if they had such property in their works they could compel the purchasers to take care of them; whereas the purchasers might, on the con-

trary, burn them if they pleased. Of course if a special contract were made that would be another matter. He was glad to see the imitation of the monogram of an artist made a forgery and treated as a misdemeanour, for that provision would give some protection to artists. He dissented, however, from the notion that an artist was in any way injured by his picture being photographed or engraved; the more frequently that was done the more it added to his reputation. He was afraid that art was being reduced to that degraded state which rendered a picture more like a button, a needle, or any other common article of manufacture subject to the same, and only to the same, conditions with respect to purchase and sale. The effect of the Bill would be to confirm this objectionable state of things, to reduce art to a mere trade, and throw works of art into the hands not of amateurs but of traders.

THE ATTORNEY GENERAL said, that the objections which had been urged were objections to details, and, therefore, he was unwilling now to trespass on the attention of the House by making a general exposition of the objects of the Bill. He would, however, advert to some of the objections which had been made. With regard to the objection of the hon. Member for Berkshire (Mr. Walter) it did not appear that that hon. Member observed the difference between the purchase of a picture and the purchase of the copyright of the picture. It would be perfectly competent for the purchaser of a picture to say to the artist, "I will buy it out and out," giving a corresponding price for it; and, if he bought the copyright, he would then hold the picture free from every description of interference, and with the perfect right of dealing as he pleased with it. If, however, he bought the picture, simply as a picture, he would then have the gratification and delight resulting from its contemplation; but was it right that he should have copies and engravings made from it, using it for a different purpose from that for which the artist sold it? The same rule applied to authors. When a person bought a book he could read it, but could not multiply copies of it unless he purchased the copyright, and that was the answer to the objection of the hon. Member for Berkshire and of the noble Lord, the Member for Marylebone. Hon. Gentlemen must be aware that in many cases the greater part of the artist's remuneration arose from the reproductions of his

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work, and he could reserve that right unless the purchaser chose to buy it from him. A great advantage resulted from this distinction to the purchaser. It constantly happened that the frequent repetition of a work of art diminished the value of the original; indeed, nothing detracted so much from its value. The Bill would protect the purchaser in that respect, while, at the same time, it would ensure to the artist a price commensurate with the labour and genius he had exhibited. With regard to the objection of the hon. Member for Brighton (Mr. Coningham), he must observe that it was necessary to name something the imitation of which should come within the grasp of the criminal law, and, therefore, the provision referred to was introduced to make the application of the law of forgery more easy in respect to this matter. Was not the hon. Member, who seemed to think that the value of pictures would be degraded by the adoption of the provision, aware that all the most celebrated artists of antiquity adopted monograms?

MR. CONINGHAM explained that what he had objected to was the refusal of copyrights to an artist, because he might have forgotten to place on his picture a monogram.

THE ATTORNEY GENERAL said, the Bill made it a forgery to imitate the signature simply because the signature completed the evidence of ownership, and because without such a provision it would not be easy, or, in fact, practicable, to apply the ordinary criminal law. As to the criticisms of the hon. Member (Mr. Layard), he must again and again have met in reading works upon the fine arts with such expressions as "the idea present to the mind of the painter and embodied in his picture," and "the conception of his work formed by the sculptor." All painters and artists worked not from an extrinsic object, but from a conception which they had derived from extrinsic objects, and which, being present in their minds, they laboured to represent in their works. There was no difficulty, therefore, in applying this language in order to protect the originator of the picture. It was, in fact, the only mode by which they could secure to the artist the real ownership and property in that which constituted the distinctive feature and characteristic of his work. Then the hon. Member asked how "part of an idea" could be imitated. The explanation was

easy. Suppose from a great picture one of the chief figures were taken, or suppose parts of several works were transferred so as to form one design, and such an aggregation of stolen parts were reproduced as original. There could be no difficulty in justifying the language of the Bill on that and other points in Committee, though he should be most happy to hear the criticisms and receive the suggestions of the hon. Member. The measure was an attempt for the first time to do justice to the artists of this country. There was no other country in Europe in which artists were not protected. The arguments of the hon. Member that artists would do best without protection would apply equally to authors, yet the right of the author to protection had been recognized by the Legislature. Was it not just to extend the same protection to the artist? It was admitted that everybody should have a property in that which was the work of his hands; and in what could a man have a property more justly than in those conceptions of the mind which were embodied in works of fine art? Why should the artist be deprived of his just and proper remuneration for that which was, in point of fact, the highest and the noblest property? This principle was recognized with respect to the author, and it was high time that it should be recognized also in the case of the artist. Parliament had extended the period during which property might be enjoyed in works of the mind embodied in print; but, while a book spoke only to those who were conversant with the language in which it was written, painting or sculpture spoke a universal language, and could be appreciated by the whole world. The artist, then, ought to be put in the same category with the painter, and he had no more apprehension that the Bill, if passed, would prove injurious to art than that the extension of the Copyright Act had proved injurious to the interests of literature. The two pursuits stood on the same foundation; they had the same right to protection, and he earnestly hoped that this Session would be signalized by the adoption of the tardy measure of practical justice then proposed in respect of works of art.

Bill read 2^o, and committed for Thursday 16th May.

House adjourned at a quarter after Twelve o'clock.

HOUSE OF LORDS,

Thursday, May 7, 1861.

WILLS OF PERSONALTY BY BRITISH SUBJECTS BILL.

ORDER FOR COMMITMENT DISCHARGED.

BILL REFERRED TO A SELECT COMMITTEE.

Order of the Day for the House to be put into Committee on the said Bill read.

LORD LYNTHURST: My Lords, I very much regret that I was prevented by accidental indisposition from being present at the second reading of this Bill. I am told that the Motion for the Committee was postponed in consequence of my absence, and I feel, therefore, that I am called upon to state my views with respect to the question which it involves—a question of very considerable importance, and one in which I confess I take a deep interest. In dealing with the subject, however, not much can be required of me after the very able statement of my noble and learned Friend by whom this measure was introduced (Lord Kingsdown). Some recent decisions have led to great confusion with reference to the form in which testamentary instruments ought to be executed by British subjects residing in foreign countries, and great anxiety has in consequence prevailed. There is hardly a professional person to whom application has not some time or another been made in such matters; and, speaking for myself, I must say I always found it much easier to put a question in these instances than to give a satisfactory solution of the point at issue. A very important decision was, in discussing this subject, referred to by my noble and learned Friend on a former night—I allude to the case of *Bremer v. Freeman*. For the learning of the Judges by whom that case was tried I entertain the utmost respect. It was determined by the Judicial Committee of the Privy Council; but I must say that, however great the respect I may have for the persons of whom that tribunal was composed—and I can unfeignedly say that I do respect them highly—their decision in this instance has tended very considerably—at least so far as residents in France are concerned—to increase the doubt and difficulty in which this subject is involved. The main question that was raised before them was one of French law to be decided by an English tribunal. It was a question of the most simple kind in point of form—namely,